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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/501,298	07/12/2004	Nicholas Daniel Kovich	6065US	8140
30173	7590	05/30/2007		
GENERAL MILLS, INC. P.O. BOX 1113 MINNEAPOLIS, MN 55440				
			EXAMINER WEINSTEIN, STEVEN L	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 05/30/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/501,298

**Applicant(s)**

KOVICH ET AL.

**Examiner**

Steven L. Weinstein

**Art Unit**

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/05/04</u> . | 6) <input type="checkbox"/> Other: ____  |

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gornet (D376,893) in view of Gornet (D393,136), Gornet et al (D369,451) and Beehler (5,993,871), further in view of Bank (D277,234), Ruiz (5,002,783), Stickle (D335,758), Kittleson (D339,899), Ito (5,298,273), Hutchinson (D251,396), Alsbrook (5,567,455), Biggs et al (5,709,898), further in view of Richards (D278,199), and Putt (D282,338). All of the claims are also rejected over the same group of references using Beehler as the primary reference.

In regard to claim 1, Gornet ('893) as further evidenced by Gornet ('136) and Gornet et al ('451), disclose a shell comprising a first sidewall and a second sidewall interconnected by a substantially flat base. Since the Gornet references refer to the edible shell as a tortilla shell, the edible shells of the Gornet references are considered to read on taco shells; there being seen to be no difference between a taco shell or a tortilla shell. Claim 1 recites that the height is larger than the width of the base by a certain recited amount. Although the drawings of the Gornet references would appear to show the recited ratio, and thus would anticipate the claim under 35USC102, since the ratio is not expressly disclosed in the Gornet references, the claim is rejected under 35USC103, and the particular recited ratio is seen to be nothing more than an obvious result effective variable, routinely determinable. Note, too, since the Gornet references

Art Unit: 1761

have flat bases, they would inherently be self-standing and stable. Beehler can be relied on as further evidence of the conventionality of stable, self-standing taco shells with substantially flat bases. Bank, Ruiz, Stickle, Kittleson, Ito, Hutchinson, Alsbrook and Biggs et al are all further relied on as further evidence of the conventionality of flat bottomed edible containers. Richards and Putt are relied on as further evidence to show that it was known to provide holders for individual tacos, (which are obviously not self-standing), wherein the holders or supports have flat bottoms to support tacos which are not self-standing in an upright manner. This evidences the obvious (and indeed the common sense) fact, that to maintain an article (any article upright and self-standing) one should provide the article with a flat bottom. In regard to the dependent claims, as noted above, the particular dimensions of the shell, i.e., the height, width, thickness, etc., is seen to have been nothing more than obvious result effective variables, routinely determinable. In regard to the curved lower portion, the art taken as a whole teaches the conventionality of providing a curvature between the sidewall and base. See, for example, in this regard Beehler and Ruiz. In regard to claims 14 and 29, the recited methods are seen to have been the obvious method of making the shell, which shell has been shown to have been obvious as detailed above. Similarly, in regard to claims 18,35 and 42, the method of use claims are seen to have been the obvious method of using the obvious shell for the reason given above. The number of shells filled, the particular conventional food components added to the shells and whether one provides an additional conventional support or not, would all have been obvious matters of choice.

As noted above, the claims are also rejected under 35USC103 employing Beehler as the primary reference. Beehler discloses a stable, self-standing taco shell that has two sidewalls interconnected by a base which allows it to stand upright. It is not clear whether the base of Beehler can be termed "substantially" flat since the word "substantially" does not appear to have been defined. In any case, as noted above, the art is replete with examples of edible containers with flat bases, including taco shells, and to modify Beehler, if necessary, and provide a flat base would therefore have been obvious. In regard to the various recited dimensions as noted above in regard to the Gornet references, although Beehler does appear to show the dimensional relationships but does not specifically state the various dimensions, the claims will be rejected under 35USC103, obviousness; the specific dimensions being seen as nothing more than routine determinations.

The remainder of the references cited on the PTO892 forms are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein  
STEVE WEINSTEIN  
PRIMARY EXAMINER 1761  
5/24/07